

## **PRACTICE AND PROCEDURE MANUAL**

### **U. S. DISTRICT JUDGE ROBERT L. ECHOLS**

#### **I. Brief Biography**

Judge Echols was appointed United States District Judge for the Middle District of Tennessee in April 1992 by President George Bush. He became Chief Judge of the district in August 1998. After graduating from Rhodes College with a B.A. degree in 1962, he attended law school at the University of Tennessee and received his J.D. degree in 1964. He served as law clerk for U.S. District Judge Marion S. Boyd in Memphis, Tennessee, from 1965-66, and as a legislative assistant for Congressman Dan Kuykendall in Washington, D.C., from 1967-1969. He was employed as an associate and later as a partner in the law firm of Bailey, Ewing, Dale & Conner in Nashville, Tennessee, from 1969-1972. In 1972 he was one of the founders of the law firm of Dearborn & Ewing in Nashville where he served as partner until his appointment to the bench.

#### **II. Preliminary General Matters**

##### **A. Scheduling**

The scheduling of court time is handled by Marcia Knoch, Judge Echols' courtroom deputy, in coordination with Vicki Kinkade, Judge Echols' secretary. Pretrial conferences, status management conferences, pleas, and sentencings are generally conducted on Mondays. These hearings can also be conducted on Fridays if the trial scheduled for that week has completed or is in jury deliberation. Judge Echols will sometimes conduct a hearing at the noon hour, in the late afternoons, or in the mornings at 8:00 or 8:30. Each hearing is set at a specific time and there is no double setting. Typically there are not too many interruptions in a trial nor are there attorneys waiting in the hall for their hearing to begin. A regular schedule is maintained.

##### **B. Correspondence with Court**

Judge Echols prefers that all matters be communicated to the Court in the form of pleadings, notices, memoranda, and briefs. Letters are not preferred. All communications should be served on opposing counsel. Correspondence received goes to the Clerk's Office for filing in the case file and is a matter of public record.

##### **C. Telephone Conference with Court**

Although Judge Echols does not suggest that pretrial conferences be conducted by telephone, he will accommodate out-of-town lawyers when an economic burden exists. Judge Echols does, however, invite lawyers to jointly communicate with the Court by telephone when necessary, and he is accessible by telephone to resolve discovery disputes if the lawyers feel the Judge can be helpful. Arrangements for such telephone conferences should be made through his courtroom deputy or his secretary, and lawyers for both sides must be on the phone.

##### **D. Telephone Conference with Law Clerk**

Telephone conferences with law clerks are discouraged.

## **E. Pro Hac Vice Admission**

Judge Echols grants motions for admission pro hac vice if accompanied by a certificate of good standing, as long as they are associated by local counsel, but Local Rule 1(d)(1) seems to suggest that an out-of-town lawyer can certify his own good standing in another state. Local counsel's signature on the pleadings means that he or she is prepared to prosecute the case, but Judge Echols realizes that often times the out-of-town lawyer is the lead counsel. However, local counsel should take this commitment very seriously. Judge Echols is disappointed when there is non-compliance with the rules, case management orders, agreements of counsel, or Court orders and the local counsel merely places the blame on the foreign counsel. There is a serious and significant responsibility placed on local counsel to ensure that the rules, agreements, and orders of the Court are fully met.

## **III. Pretrial Matters - Civil Cases**

### **A. Scheduling/Case Management Orders**

Judge Echols refers all new cases to the magistrate judges for case management purposes.

### **B. Continuances and Extensions**

The general policy is to comply with the rules. There are no automatic continuances or extensions, and the Judge expects compliance with the deadlines set in case management orders and other orders of the Court. "Gentlemen's agreements" between lawyers to alter dates or requirements are prohibited without notification and approval of the Court. Judge Echols expects a lawyer requesting a continuance or extension to discuss the matter with the other attorney before presenting a request to the Court. All requests for continuances or extensions should be documented in the court record by filing a motion and a brief supporting memorandum giving a detailed explanation of the grounds for the request, along with a proposed agreed order. The proposed order should specify a date certain for the extension or continuance. Parties must be accountable to the Court and to each other for deadlines and commitments set forth in Court orders. Judge Echols will address requests for extensions or continuances which affect (1) trial dates or (2) responses to dispositive motions. Any other requests for extensions or continuances will be addressed by the magistrate judge (case manager).

### **C. Pretrial Motions**

#### **1. Referral to Magistrate Judge**

Pretrial motions are addressed by the magistrate judges as the case managers. Pursuant to Local Rule 11(f)(1)(a), all dispositive motions are resolved by Judge Echols.

#### **2. Oral Argument**

Oral argument is generally permitted if lawyers request and when Judge Echols believes the arguments will aid in the understanding of the issues, the applicable law, and/or the positions of the parties. He sometimes declines oral argument when he believes it would not be helpful for a determination of the issues before the Court.

### **3. Briefs**

Pretrial briefs are required in a jury case. They are not required in a non-jury case. In a non-jury case, the general policy is to submit proposed findings of fact and conclusions of law after the trial and not file pretrial briefs. If there is a critical issue that an attorney feels a need to address, he/she and opposing counsel are permitted to file a brief on that particular critical issue before the trial. Findings of fact and conclusions of law are submitted after the transcript is filed (if a transcript is ordered). Judge Echols has no policy to cite to the record if no transcript is filed; however, citations to the record are more persuasive and helpful to the Court.

Briefs or memoranda of law are required to be filed as separate documents in support of all motions. Attorneys should strictly comply with Local Rule 8(b)(7) when filing motions for summary judgment. Affidavits, depositions, and/or exhibits filed in support of summary judgment motions must relate to admissible evidence. If depositions are filed, attorneys should designate the specific pages and lines of the testimony which support their respective positions.

### **4. Chamber Copies of Filings**

Judge Echols does not want extra copies of filings.

### **5. Proposed Orders**

Proposed orders are helpful, but many times they are drafted in a biased manner. Some attorneys tend to take on an air of advocacy in drafting orders rather than reflecting what is agreed and what is to be done. Judge Echols welcomes proposed orders, but usually does not require them unless requested. If the proposed order is not agreed upon, he would like to know what portion is disputed.

### **6. Motions to Ascertain Status**

Judge Echols has no problem with attorneys filing a motion to ascertain status of a case or a pending motion. Short of filing a motion to ascertain status, the attorneys may call Marcia Knoch to inquire about the status of a particular case or motion. He believes the attorneys have a right to inquire about the status of their case, especially if they are waiting for some action to be taken by the Court.

## **D. Discovery**

### **1. Discovery Period and Extensions**

See III B. above.

### **2. Interrogatory Responses**

Due in thirty days. Extensions are granted by case manager only, not by side deals between attorneys. The Court cannot monitor or police side deals, which often lead to discovery fights. Minor pretrial extensions are normally granted if both parties agree. However, any deviations from rules or Court orders should be done by motion and an agreed order.

### **3. Resolution of Discovery Disputes**

Discovery disputes are normally resolved by the case manager. However, if Judge Echols is involved, discovery disputes can be resolved by filing an appropriate motion, meeting informally in chambers, or by a joint telephone conference. Judge Echols often deals with discovery disputes via telephone conferences either early in the morning before court begins, at the noon hour, or in late afternoon. The attorneys can often work out these problems by simply communicating with each other.

### **4. Confidentiality Agreements**

Judge Echols usually accepts if parties agree as to terms, unless these are policy reasons not to put under seal. He resolves these issues on a case-by-case basis. They are considered under seal until he releases the information.

### **5. Expert Witnesses**

Disclosure is mandatory under Fed. R. Civ. P. 26(a)(2). Pursuant to Local Rule 12(c)(6)(c), the judge or case manager may require that the expert's trial testimony be reduced to writing in the form of a narrative statement. This procedure frequently saves time, but it usually produces dull testimony. Experts may supplement their statements by models, videos, or overheads as long as the other side is informed in advance.

Attorneys should be careful to ensure that the required report of the testifying expert covers all subjects and opinions to be offered at trial. The purpose of the report is to alert the opposing attorney of all the opinions of the expert, the reasons upon which the opinions are based, all data, tests, or information considered by the expert in forming the opinion, and any exhibits or summaries to be used by the expert in explaining the opinions. The mandatory disclosure requirements under Rule 26(a)(2) should be made in good faith. This is not a time to try to hoodwink your opponent with partial or misleading disclosures of expert testimony. Failure to fully comply may result in the exclusion of part or all of the expert's testimony. The expert's opinion should be complete and thorough. Attorneys are required to supplement any changes or additions to the expert's report in a timely manner in accordance with Rule 26(e)(1).

### **E. Settlement**

All judges handle settlement conferences for each other. Most settlement conferences are done by magistrate judges. The parties sometimes request an Article III Judge or even a specific judge. Judge Echols encourages settlement conferences and inquires about settlement possibilities often. The parties are required to at least talk about settlement, and are encouraged to talk about it early. Since approximately 95% of the cases settle before trial, attorneys should talk about settlement at the first time possible and continue to consider settlement options during discovery.

Judge Echols is the chair of the Alternate Dispute Resolution (ADR) Committee in this district. On February 12, 1998, new Local Rules 21 through 27 were adopted to implement the Court's Alternative Dispute Resolution Plan. This district is fortunate to have a number of experienced and effective attorneys who have qualified as "neutrals" to assist the Court and the parties in the settlement of cases before the Court. The ADR Coordinator in the Clerk's office maintains a list of these neutrals. Judge Echols

encourages the attorneys to take advantage of the experience and expertise of these neutrals in reaching an acceptable out-of-court settlement of their case.

#### **F. Pretrial Briefs**

Pretrial briefs were discussed earlier in the section on pretrial matters. In Judge Echols' opinion, the most effective pretrial briefs are those which are reasonably brief, to the point, and deal with the pivotal issues to be decided.

#### **G. Injunctions**

Injunctions are filed in the Clerk's Office and scheduled through the courtroom deputy. Judge Echols wants to know what efforts have been made to contact the other side if they are not at the hearing.

### **IV. Pretrial Matters - Criminal Cases**

#### **A. Suppression Hearings**

Suppression hearings are scheduled when necessary.

#### **B. Motions**

Judge Echols does not require a response to every motion filed in a criminal case. Failure to respond shall indicate that there is no opposition to the motion.

### **V. Trial Procedure**

#### **A. Scheduling**

Pursuant to Local Rule 11, cases are usually scheduled for trial after some discovery and it appears that settlement is unlikely.

#### **B. Out-of-Town Parties, Witnesses, or Attorneys**

Judge Echols tries to accommodate out-of-town parties, witnesses, and attorneys as long as it does not unduly interfere with the Court's calendar and the efficient administration of justice.

#### **C. Motions in Limine**

Motions in limine are invited and are called for at the pretrial conference. He wants the attorneys to think about evidentiary disputes early so they can be decided in advance, if possible, without an interruption in the orderly presentation of proof at trial. Judge Echols will rule early on the motion if he can do so because it is important for the lawyers to know of these problems in advance if possible.

## **D. Voir Dire**

Judge Echols' method of jury selection in a civil case is to seat all the jurors on the panel at once. The judge asks the initial questions to the entire panel and then allows follow-up questions by the attorneys. The judge will discuss with the attorneys ahead of time the amount of time they have in which to ask follow-up questions. Both sides are given an equal amount of time, usually about fifteen to twenty minutes. He doesn't tell the attorneys what to ask, but he will interrupt if the questions are not appropriate. The attorneys can ask probing questions or wasteful questions during their designated time. After the initial and follow-up questions, the attorneys are called to the bench to inquire if there are any challenges for cause. Challenges for cause are ruled upon at that time. Afterwards, a target number for the jury is established depending on the length of the trial. The longer the trial, the more extras; usually two. The target number determines how many jurors to eliminate. Three peremptory challenges are normally allowed, but Judge Echols grants more if the lawyers agree (most do). These strikes are mandatory. The plaintiff first exercises his/her mandatory strikes from the jury list and then passes the form to the defendant to exercise his/her mandatory strikes. The plaintiff and defendant see each other's strikes, so there are no double strikes.

In a criminal case, twelve jurors are seated and then replacements are called and questioned as individual jurors are challenged. Since the government and defense attorneys do not see each other's strikes, you can have double strikes in a criminal case.

## **E. Note-Taking by Jurors**

Note-taking by jurors is allowed, but the customary admonitions are given.

## **F. Opening Statements**

### **1. Length**

Judge Echols gets an estimate from the attorneys as to how long their opening statements will last. He generally suggests no more than fifteen minutes, but makes a determination based on the estimates given by the attorneys.

### **2. Use of Exhibits**

The use of exhibits is allowed in opening statements, so long as there are no apparent evidentiary problems. Often times, the exhibits are helpful to overview the anticipated evidence and to emphasize the key issues to be decided from the evidence to be presented.

## **G. Side Bar Conferences**

Side bar conferences are generally allowed, unless the requests are repetitive and the parties are being overly contentious.

## **H. Videotaped Testimony**

Videotaped testimony is allowed.

## **I. Deposition Reading**

Judge Echols usually lets the lawyers determine how depositions will be read at trial.

## **J. Exhibits**

There should be four copies of every exhibit: one original for the witness, one copy for the Court, one copy for opposing counsel, and one copy for the examining attorney. All exhibits must be tagged with adhesive-backed exhibit labels provided by the Clerk's Office. Premarking is required if there are numerous exhibits. Judge Echols encourages the use of the courtroom evidence presenter with camera and screen to present documents and exhibits. Judge Echols has sometimes requested that exhibit books be furnished if exhibits are voluminous. Exhibit books or binders also are helpful and save time when exhibits are to be shown to the jury during the examination of witnesses. Passing single copies of documents or photographs to jurors is time consuming and disrupts the orderly presentation of the proof.

## **K. Motions for Judgment as a Matter of Law**

Motions for judgment as a matter of law are made and granted in accordance with Fed. R. Civ. P. 50. This is a high standard--all inferences are given to the non-moving party--but this motion should not be overlooked to narrow the issues to be decided.

## **L. Proposed Jury Instructions and Verdict Forms**

Judge Echols prepares the standard jury instructions. Special jury instructions and proposed verdict forms are welcome, but should be submitted in accordance with the pretrial order, and no later than the beginning of trial.

## **M. Proposed Findings of Fact and Conclusions of Law**

In a non-jury case, the general policy is to submit proposed findings of fact and conclusions of law after the trial and not file pretrial briefs, except perhaps on a particular issue which may be pivotal in the consideration of the evidence. Findings of fact and conclusions of law are submitted after the transcript is filed (if a transcript is ordered). Judge Echols has no policy to cite to the record if no transcript is filed; however, references to the record are helpful to the Court and are more persuasive.

## **N. Offers of Proof**

Judge Echols allows offers of proof.

## **O. Jury Deliberation**

### **1. Copy of Instructions**

Jurors get copies of jury instructions. Four copies are generally sent back to a deliberating jury.

## **2. Access to Exhibits**

As a general rule, all exhibits admitted into evidence are sent to the jury, but there are exceptions. For example, a deliberating jury is not normally allowed to operate an audio or videotape machine to listen to or view evidence, although upon request they may be brought back into the courtroom to listen or view under the supervision of the Court.

## **3. Access to Transcript of Testimony or Videotaped Testimony**

If there is a transcript of the videotape and it is admitted into evidence, it may be sent back to the deliberating jury.

## **4. Availability of Counsel**

Judge Echols allows lawyers to return to their offices during jury deliberation, but they must provide telephone numbers and be available upon call in ten to fifteen minutes.

## **5. Taking the Verdict and Special Interrogatories**

The lawyers are present when the verdict is received and read. Special interrogatories must be submitted in advance and agreed upon in the jury charge conference.

## **6. Polling the Jury**

Judge Echols polls the jury in every case.

## **7. Interviewing the Jury**

The interviewing of jurors is not allowed without permission of the Court. The parties may file a motion for permission to interview the jurors, but Judge Echols usually does not allow interviewing of jurors immediately after the trial unless he is notified in advance and the jurors have agreed to be interviewed. Many jurors don't want to answer questions about their vote, the jury's verdict, the position of fellow jurors, or justification of their decision. Jurors take their jobs seriously and most are mentally drained after the verdict is rendered. Judge Echols has allowed attorneys to submit proposed written jury questions to him with copies to the other side, and he has forwarded the approved questions to the jurors. Answers received are furnished to both sides.

## **VI. Sentencing in Criminal Cases**

A sentencing before Judge Echols lasts approximately one hour. Position papers must be submitted in advance. The presentence report is reviewed. Live testimony is permitted.

## **VII. Other Comments**

-- Attorneys are not permitted to walk around freely in the courtroom. Attorneys are requested to stay close to the lectern and should ask permission to approach a witness in the witness box.



- Attorneys should stand when speaking in court.
- Attorneys should be prepared to introduce their witnesses with whatever background information is desired in accordance with Local Rule 12(c)(2), so as to avoid laborious and time-consuming questions on the subject.
- Attorneys should not repeat or attempt to characterize the witnesses' answers during an examination.
- Attorneys should not make a speech or attempt to coach the witness when making an objection.
- Attorneys in Nashville show respect for the Court. Sometimes, however, they don't show respect for each other. They should always try to act professionally as officers of the Court, without compromising zealous advocacy or revealing a personal dislike for the opponent.

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